

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.7861 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

ISWARBHAI GOKALDAS SOLANKI & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

Appearance :

MR BM MANGUKIYA for Petitioner(s) : 1 - 2.
MS SANDHYA NATANI, AGP for Respondent(s) : 1 - 3.
MR JV BHAIRAVIA for Respondent(s) : 4,
MR BS PATEL for Respondent(s) : 5,
MRS RANJAN B PATEL for Respondent(s) : 5,

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 07/02/2007

ORAL JUDGMENT

(1) This petition prays for following reliefs:

"52. On the facts and circumstances mentioned hereinabove, the petitioners pray to Your Lordships that-

A) Be pleased to issue a writ of mandamus or in the nature of mandamus or any other appropriate writ, order or direction to quash

and set aside the impugned order passed by the respondent No.1 dated September 27, 1996 allowing the Revision Application preferred by the respondent No.4 society and restore the orders passed by the Additional Registrar and the District Registrar directing the respondent No.4 to permit the petitioners to exercise their rights and powers as the members of the respondent No.4 society;

- B) Pending admission and final disposal of this petition, be pleased to stay the implementation, execution and operation of the impugned order passed by the respondent No.1 dated September 27, 1996 and be pleased to further direct that the respondent No.4 and/or its agents, servants shall not restrain the petitioners from exercising the rights and privileges of the petitioners as members of the respondent No.4 society and further restrain the respondent No.4 and their agents and servants from treating the petitioners as the nominal members.
- C) Be pleased to pass such other and further orders as may be deemed fit."

- (2) The scope of the present petition is very limited, but, unfortunately, both the contesting parties, namely, the petitioners and respondent No.4-Society, have unnecessarily cluttered the record with issues which are not germane to the present controversy.
- (3) It is the say of the petitioners that they were issued certificate of membership of respondent No.4-Society

and have occupied the premises constructed on the respective plots allotted to two petitioners. It appears that initially both the petitioners were permitted to attend the general body meeting of respondent No.4-Society. However, the grievance of the petitioner is that, since sometime in 1992-93 the petitioners were not served with agenda of the meeting to be held by the general body of the Society and hence, they made a complaint to the District Registrar, respondent No.3 herein.

- (4) The District Registrar had initiated proceedings under Section 76-B of the Gujarat Co-operative Societies Act, 1961 (the Act) against the chairman and the Secretary of respondent No.4-Society. During pendency of such proceedings under Section 76-B of the Act, the District Registrar issued direction by way of communication dated 27.09.1995 to the respondent No.4-Society to send the agenda of the Annual General Meeting to the petitioners and permit them to attend the Annual General Meeting, which was to be held on 30.09.1995.

- (5) Respondent No.4-Society challenged the said communication issued by District Registrar before the Additional Co-operative Societies (Appeals) by way of Revision Application No.72 of 1995. The Additional Registrar rejected the said Revision Application while confirming the order made by the District Registrar. Therefore, respondent No.4-Society carried the matter further in revision under Section 155 of the Act and the revisional authority, vide order dated 27.09.1996 accepted the revision application and cancelled the orders made by the District Registrar and the Additional Registrar (Appeals). This order has been challenged in the present petition.
- (6) Heard the learned advocates appearing for the petitioners and the respondent No.4-Society.
- (7) The facts are not in dispute. Respondent No.4-Society treated the proceedings initiated under Section 76-B of the Act by the District Registrar as being proceedings relatable to the Society and made submissions accordingly before the revisional authority which prompted the revisional authority to

pass the impugned order. Provisions of Section 76-B of the Act pertain to removal of any officer of the society provided he makes persistent default or is negligent in performance of the duties imposed on the officer by the Act or the Rules or the Bye-laws or does anything which is prejudicial to the interest of the society. Thus, the provision itself shows that the action contemplated under Section 76-B of the Act is not against a society but is against an officer for the default committed by the officer. Therefore, the reason which has weighed with the revisional authority, namely, the District Registrar issued direction during pendency of proceedings under Section 76-B of the Act, cannot be considered to be germane. The revisional authority has committed an error in law in equating the office-bearers with the society. The proceedings under Section 76-B of the Act were initiated against the office-bearers of the Society while the direction issued by the District Registrar on 27.09.1995 was issued to the Society. Both are independent of each other, namely, direction dated 27.09.1995 and the proceedings under Section

76-B of the Act have no connection. Therefore, pendency of the proceedings under Section 76-B of the Act cannot have any relevance when the validity or otherwise of the direction dated 27.09.1995 is to be examined.

- (8) It is also an admitted fact that the respondent No.4-Society has not exercised any powers under Section 36 of the Act which permits the society to expel a member after passing the necessary resolution as provided by the said section. Therefore, in absence of any legal proceedings for cancellation of the membership of the petitioners, respondent No.4-Society could not have restrained the petitioners from attending the Annual General Meeting, nor could respondent No.4-Society have stopped forwarding the agenda of the meetings of the general body. The Registrar was, therefore, perfectly justified in issuing the direction dated 27.09.1995. On the same lines, the Additional Registrar (Appeals) was also correct in upholding the order made by the District Registrar.

- (9) In light of what is stated hereinabove, the impugned order dated 27.09.1996 made by the revisional authority under Section 155 of the Act is not justified and is hereby quashed and set aside and order dated 27.09.1995 made by the District Registrar stands restored to file.
- (10) During course of hearing various submissions were made on behalf of respondent No.4-Society regarding the petitioners having not complied with the requirement of the Rules and/or Bye-laws. The Court has not expressed any opinion in relation to the said submissions and it is open to the parties to take any action in accordance with law after granting proper opportunity to the petitioners, in case any such action is initiated.
- (11) The petition is allowed in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Bhavesh*